

## Message Text

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ACTION L-02

INFO OCT-01 IO-10 ISO-00 SR-02 ORM-01 AF-06 ARA-10 EA-10

EUR-12 NEA-09 CIAE-00 DODE-00 PM-03 H-02 INR-07

NSAE-00 NSC-05 PA-02 PRS-01 SP-02 SS-15 USIA-15 HEW-06

AID-05 /126 W

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R 091212Z MAY 75

FM USMISSION GENEVA

TO SECSTATE WASHDC 2766

UNCLAS SECTION 1 OF 2 GENEVA 3366

FOR: KELLOGG AND SCHWEBEL

E.O. 11652: N/A

TAGS: SREF

SUBJECT: TERRITORIAL ASYLUM - MAY 7

1. AT THIRTEENTH MEETING COMMITTEE CONSIDERED  
ITALIAN PROPOSAL FOR REVISED ARTICLE 5 (SOLIDARITY).  
ITALY ACCEPTED US PROPOSAL THAT EACH CONTRACTING PARTY  
SHOULD DETERMINE THE MEASURES WHICH ARE APPROPRIATE TO  
SHARE BURDEN OF ASYLUM STATES, BUT CHAIR NEVERTHELESS PUT  
US AMENDMENT TO VOTE. IT WAS ADOPTED 15(US)-1 (AUSTRIA)-0.  
WITH CONSEQUENT DRAFTING CHANGES, ARTICLE ADOPTED  
12(US)-0-5 AS FOLLOWS: "WHENEVER A CONTRACTING  
STATE EXPERIENCES DIFFICULTIES, SUCH AS THROUGH A  
SUDDEN INFLUX OR FOR OTHER COMPELLING REASONS, IN GRANTING  
OR CONTINUING TO GRANT THE BENEFITS OF THIS CONVENTION,  
EACH CONTRACTING STATE SHALL, AS THE REQUEST OF THAT  
STATE, THROUGH THE OFFICE OF THE UNHCR OR ANY OTHER  
AGENCY OF THE UN WHICH MAY SUCCEED IT, OR BY ANY OTHER  
MEANS CONSIDERED SUITABLE, TAKE SUCH MEASURES AS IT  
DEEMS APPROPRIATE, INDIVIDUALLY OR IN CONJUNCTION WITH  
OTHER STATES, TO SHARE EQUITABLY THE BURDEN OF THAT  
STATE."

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2. ARTICLE 6 (VOLUNTARY REPATRIATION). AUSTRIA PROPOSED TO REPLACE "VOLUNTARILY AND IN FULL FREEDOM" BY WORDS "OF HIS OWN FREE WILL". US SUPPORTED. USSR PROPOSED TO ADD A SENTENCE: "VOLUNTARY REPATRIATION MAY TAKE PLACE ONLY IN CASES WHERE THE CONDITIONS OR REASONS WHICH CAUSED TO PERSON TO SEEK ASYLUM HAVE BEEN REMOVED." US OPPOSED, NOTING THAT UNIVERSAL DECLARATION ON HUMAN RIGHTS SPECIFIES RIGHT OF PERSON TO LEAVE AND RETURN TO HIS HOMELAND. MEXICO ALSO OPPOSED. SWEDEN PROPOSED TO REPLACE LATTER PART OF ARTICLE, BEGINNING WITH "THE STATE GRANTING ASYLUM" BY WORDS "NEITHER THE CONTRACTING STATE GRANTING ASYLUM NOR ANY OTHER CONTRACTING STATE SHALL PUT ANY OBSTACLES IN THE WAY OF HIS REPATRIATION." USSR PROPOSAL REJECTED 2-11(US)-1. AUSTRIAN AND SWEDISH AMENDMENTS ADOPTED BY CONCENSUS.

3. ARTICLE 7 (COOPERATION). US PROPOSED TO SUBSTITUTE "SHALL CONSULT WITH" IN SECOND SENTENCE BY WORDS "MAY CONSULT WITH", AND TO ADD NEW SENTENCE: "A CONTRACTING STATE SHALL PERMIT PERSONS SEEKING ASYLUM, IF THEY SO DESIRE, TO CONSULT WITH OFFICE OF UNHCR." SUPPORTED BY FRANCE, UK, AUSTRALIA; OPPOSED BY USSR AND MALI. MALI ASKED US AS SPONSOR OF PROPOSAL, WHETHER IT WAS CONTEMPLATED THAT PERSON SEEKING ASYLUM WAS TO CONSULT UNHCR DIRECTLY OR THROUGH GOVERNMENT OF STATE IN WHICH HE SEEKING ASYLUM. US REPLIED PERSON WOULD CONTACT UNHCR IN MANNER OF HIS CHOICE, EITHER DIRECTLY OR THROUGH GOVERNMENT OF ASYLUM STATE. NO COMMITTEE MEMBER CHALLENGED THIS INTERPRETATION. MEXICAN PROPOSAL TO DELETE SECOND SENTENCE OF ARTICLE 7 OF DRAFT CONVENTION SUPPORTED BY INDIA, IRAQ, SRI LANKA, US (ON UNDERSTANDING ITS PROPOSAL FOR NEW SENTENCE REMAINED BEFORE COMMITTEE), AUSTRALIA; RESISTED BY REPRESENTATIVE OF UNHCR (DADZEI). SECOND SENTENCE OF ARTICLE DELETED 12(US)-4-0. US PROPOSAL FOR NEW SENTENCE ADOPTED 7(US)-3-4. ARTICLE 7 AS WHOLE ADOPTED 8(US)-3-4.

4. ARTICLE 8 (PEACEFUL CHARACTER). USSR URGED UNCLASSIFIED

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DELETION OF ARTICLE 8 OR TRANSFER TO PREAMBLE ON GROUNDS IT NOT SUBSTANTIVE PROVISION. INDIA AND BRAZIL SUPPORTED TRANSFER TO PREAMBLE. MEXICO, US, AUSTRALIA, FRANCE, URUGUAY AND UK URGED ARTICLE IS SUBSTANTIVE PROVISION THAT SHOULD BE RETAINED IN OPERATIVE PORTION OF CONVENTION. MEXICO PROPOSED TO SHORTEN ARTICLE: "A GRANT OF ASYLUM IN ACCORDANCE WITH THIS CONVENTION SHALL BE RESPECTED BY ALL STATES."

SUPPORTED BY FRANCE AND URUGUAY. AUSTRALIA PROPOSED TO  
DUPLICATE THE WORDING OF ARTICLE II OF THE OAU  
REFUGEE CONVENTION, REPLACING " AS SUCH IT DOES NOT  
CONSTITUTE" BY THE WORDS "IT SHALL NOT BE REGARDED."  
SUPPORTED BY US, FRANCE AND MALI. SWEDEN PROPOSED  
DELETION OF "IN ACCORDANCE WITH ARTICLE 1" TO AVOID  
REVERSE IMPLICATION THAT A GRANT OF ASYLUM COULD  
POSSIBLY NOT BE A "PEACEFUL AND HUMANITARIAN  
ACT" IF NOT DONE PRUSUANT TO THIS CONVENTION.  
SUPPORTED BY AUSTRALIA AND MALI; OPPOSED BY FRANCE,  
INDIA AND IRAQ. PROPOSAL TO TRANSFER ARTICLE  
TO PREAMBLE REJECTED 4-11(US)-1. MEXICAN PROPOSAL  
REJECTED 3-7(US)-4. SWEDISH PROPOSAL REJECTED 5(US)-  
7-4. AUSTRALIAN PROPOSAL ADOPTED 11US)-0-5.  
COMMENT REAL POINT OF SWEDISH PROPOSAL READ IN  
COMBINATION WITH SWEDISH PROPOSAL FOR NEW ARTICLE  
WHICH IS DISCUSSED BELOW, APPEARS TO HAVE BEEN TO  
ESTABLISH PROPOSITION THAT GRANT OF ASYLUM, EVEN TO  
PERSON NOT WITHIN TERMS OF ARTICLE 1, IS FRIENDLY AND  
HUMANITARIAN ACT AND MUST BE RESPECTED BY OTHER STATES.

5. FOURTEENTH MEETING - ARTICLE 9 (QUALIFICATION).  
BRAZIL PROPOSED REPLACING "ARTICLES 2 OR 3" WITH  
WORDS "THE PRESENT CONVENTION." SUPPORTED BY FRANCE,  
MEXICO, INDIA, IRAM AND ITALY; OPPOSED BY IRAQ, UK  
AND SWEDEN. THIS PROPOSAL, WHICH ALLOWS CONTRACTING  
PARTIES TO DETERMINE FOR THEMSELVES THE EXTENT OF THE  
APPLICATION OF THE PROVISIONS OF THE CONVENTION TO  
SPECIFIC FACTUAL SITUATIONS WITH WHICH THEY MAY BE  
CONFRONTED, ADOPTED 10US)-3-1. CLARIFYING AMENDMENT  
BY ITALY, ADDING "AND IN WHICH HE SEEKS ASYLUM" EXTENT  
OF ARTICLE, ADOPTED 14(US)-3-1.

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ACTION L-02

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6. ARTICLE 10 (REGIME). MEXICO RENEWED PROPOSAL MADE DURING FIRST READING FOR DELETION OF ARTICLE, ARGUING THAT FIRST PARAGRAPH POSED LEGAL OR CONSTITUTIONAL PROBLEMS FOR MANY COUNTRIES AND SECOND PARAGRAPH RELATED TO STATE RESPONSIBILITY RATHER THAN ASYLUM. HE DID NOT REFER TO OTHER PROBLEM WHICH MANY COMMITTEE MEMBERS FOUND TROUBLESOME: PROPOSAL OF NIGERIA AT 7TH MEETING FOR A PROVISION IN PARAGRAPH 1 THAT ACTS OF FREEDOM FIGHTERS AGAINST COLONIALISM AND RACISM COULD NOT BE CONTRARY TO PURPOSES AND PRINCIPLES OF UN CHARTER (WITH RESULT THAT THOSE ACTS NEED NOT BE PROHIBITED BY ASYLUM STATE). PROPOSAL TO DELETE ARTICLE SUPPORTED BY US, UK, USSR AND FRANCE, AND ADOPTED BY CONCENSUS.

7. ARTICLE II (GOOD FAITH). BRAZILIAN PROPOSED THAT THIS ARTICLE WAS ESTABLISHED PRINCIPLE OF LAW RECOGNIZED BY ARTICLE 26 OF VIENNA CONVENTION ON LAW OF TREATIES AND COULD ACCORDINGLY BE DELETED AS UN-NECESSARY. DELETION APPROVED BY CONCENSUS.

8. NEW ARTICLE PROPOSED IN TWO VERSIONS BY AUSTRIA AND SWEDEN. AUSTRIA PROPOSED:  
"NOTHING IN THIS CONVENTION SHALL PREVENT A CONTRACTING STATE FROM GRANTING ASYLUM TO PERSONS REFERRED TO IN UNCLASSIFIED

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ARTICLE 2(1) UNDER CONDITIONS MORE FAVORABLE THAN THOSE LAID DOWN IN THIS CONVENTION." SWEDEN PROPOSED: NOTHING IN THIS CONVENTION SHALL PREVENT A CONTRACTING STATE FROM GRANTING TO PERSONS REFERRED TO IN ARTICLE 2 A MORE FAVORABLE TREATMENT THAN THAT PROVIDED FOR IN THIS CONVENTION, OR FROM GRANTING ASYLUM TO PERSONS OTHER THAN THOSE COVERED BY THIS CONVENTION." CONSIDERABLE CONCERN WAS EXPRESSED IN THE COMMITTEE ON THE GROUNDS THAT

SWEDISH PROPOSAL WOULD GIVE PERSONS NOT COVERED BY THE CONVENTION THE BENEFITS OF IT, PARTICULARLY THE OBLIGATION OF OTHER STATES TO RESPECT A GRANT OF ASYLUM TO THEM AS PROVIDED IN ARTICLE 8. (THIS MIGHT HAVE BEEN THE EFFECT IF THE SWEDISH DELEGATION IN ARTICLE 8 HAD SUCCEEDED.) AFTER CONSIDERABLE DISCUSSION, INVOLVING TWO SUSPENSIONS OF THE MEETING TO PERMIT AUSTRIA AND SWEDEN TO CONFER, A HYBRID TEXT WAS EVOLVED, INCORPORATING, IN THIS ORDER, THE AUSTRIAN PROPOSAL, THE SECOND PART OF THE SWEDISH PROPOSAL BEGINNING WITH "OR FROM GRANTING," AND A NEW PROVISION SUGGESTED BY THE USSR: "IT BEING UNDERSTOOD THAT IN THE LATTER CASES THE PROVISIONS OF THIS CONVENTION DO NOT APPLY". ADOPTED BY CONSENSUS.

9. USSR PROPOSED NEW ARTICLE: "PROVISIONS OF PRESENT CONVENTION SHALL NOT AFFECT THE PROVISIONS OF OTHER INTERNATIONAL AGREEMENTS TO WHICH THE CONTRACTING STATES ARE PARTIES." USSR HAD RAISED THE PROBLEM OF THE RELATIONSHIP OF THE CONVENTION TO PREVIOUS AGREEMENTS EARLIER IN THE DISCUSSION OF SEVERAL SUBSTANTIVE ARTICLES AND HAD BEEN TOLD IT WOULD BE TAKEN UP AT END OF CONSIDERATION OF ARTICLES. BRAZIL SAID PROPOSAL WAS FINAL CLAUSE OUTSIDE MANDATE OF COMMITTEE, BUT URGED THAT REPORT INDICATE TO GENERAL ASSEMBLY THAT PLENIPOTENTIARY CONFERENCE SHOULD CONSIDER THIS PROBLEM. THREAT BY USSR TO REOPEN DISCUSSION OF RELEVANT SUBSTANTIVE ARTICLES DREW NO SUPPORT IN COMMITTEE, IT BEING WELL PAST THE CLOSING HOUR OF THE MEETING. USSR AGREED TO MATTER BEING TREATED IN REPORT. OUR IMPRESSION IS THAT CHAIRMAN THINKS THAT USSR HAS A POINT, AND WILL, IN UNCLASSIFIED

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FAIRNESS, FAVOR A STATEMENT FAVORABLE TO USSR POSITION; MORE IMPORTANTLY, OUR INFORMATION IS THAT AUSTRIA FAVORS USSR PROPOSAL BECAUSE AUSTRIA DESIRES AVOID IMPAIRMENT TO ITS BILATERAL EXTRADITION TREATIES. UK HAS EXPRESSED CONCERN, WHICH US SHARES, THAT PROPOSAL WOULD MAINTAIN CERTAIN TYPES OF BILATERAL AGREEMENTS SUCH AS THOSE BETWEEN USSR AND NEIGHBORING STATES (INCLUDING IRAN), WHICH USSR DISCUSSED IN COMMITTEE AND WHICH PROVIDE FOR FORCIBLE RETURN OF ILLEGAL BORDER CROSSERS. IN ANY EVENT WE BELIEVE THAT LANGUAGE TO BE PUT IN REPORT COVERING THIS ISSUE MUST BE VERY CAREFULLY CONSIDERED AND US WILL WEIGH ITS POSITION ACCORDINGLY.

10. FACT THAT WE FINISHED SECOND READING ON SCHEDULE REFLECTS SKILL OF CHAIRMAN AND SELF-DISCIPLINE OF

WESTERN EXPERTS IN LIMITING LENGTH OF THEIR STATE-  
MENTS -- A VIRTUE THAT WE TOOK ACTIVE STEPS IN THE  
CORRIDORS TO ENCOURAGE. EVEN THE USSR BECAME LESS  
PROLIFIC, PROBABLY BECAUSE HE WOULD HAVE BEEN UN-  
ACCEPTABLY CONSPICIOUS HAD HE CONTAINED HIS  
OBSTRUCTIVE PERFORMANCE OF THE EARLIER MEETINGS.

ABRAMS

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## Message Attributes

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**Channel Indicators:** n/a  
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